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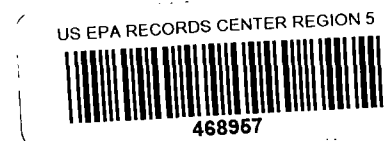
MARK M. DAVIS
LICENSED TO PRACTICE IN MICHIGAN AND WISCONSIN

DIRECT DIAL 616 / 336-6733

June 7, 1996

VIA FACSIMILE AND REGULAR U.S. MAIL

Docket Clerk
Mail Code MFA-10J
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604



*Re: Albion-Sheridan Township Landfill Site, Calhoun County, Michigan,
Proposed De Minimis Settlement Agreement, Docket No. V-W-96-340*

Dear Madam/Sir:

The purpose of this letter is to submit for the Administrative Record the response of the City of Albion (the "City") to the proposed de minimis settlement agreement (the "Agreement") between the U.S. Environmental Protection Agency ("EPA") and Albion College, Bilicke Oldsmobile Sales, Inc., and Frahm Chevrolet, Buick, Pontiac Co., for the Albion-Sheridan Township Landfill "Superfund" Site located in Calhoun County, Michigan (the "Site" or the "Landfill"). The Agreement proposes a full cash-out de minimis settlement pursuant to Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. § 9622(g).

The City Did Not "Operate" the Landfill as Alleged in the Agreement's Statement of Facts

In paragraph 7 of the Statement of Facts section of the Agreement, the EPA alleges that:

From 1966 to 1981, the landfill was privately owned but operated by the City of Albion and the land owner for the disposal of municipal and industrial waste from the City of Albion and nearby townships.

(Emphasis added.)

Contrary to the EPA's assertions in paragraph 7, the City did not operate the Landfill. Rather, the Landfill was owned and operated at all relevant times by Mr. Gordon Stevick.

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The controlling test for CERCLA operator liability in this matter is the "actual control" test. The actual control test requires actual and substantial control of and participation in the day-to-day decision-making and activities at a facility for operator liability to attach. The City's involvement at the Landfill was minimal, being no more than necessary to ensure that it (and its citizens) received waste disposal services from Gordon Stevick commensurate with the price it agreed to pay Stevick under its waste disposal service agreement; the City never owned or leased the Site; the City never had any right, contractual or otherwise, to operate the Landfill; the City never sought and was never granted a permit from the State to operate the Landfill; City employees never managed the Site or worked there; the City never managed or provided any on-site supervision of Stevick's employees or activities; the City never constructed any improvements at the Site; the City was but one of many of Stevick's waste disposal service customers and did not control access to the Landfill; the City did not participate in any waste handling practices or decision-making at the Site; and was not involved in the day-to-day activities of the Landfill.

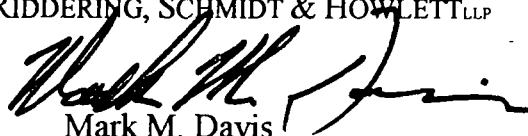
In sum, the level of the City's involvement (and the nature of that involvement) with regard to the Site falls far short of that necessary for operator liability to attach under the actual control test. The City cannot be held liable under CERCLA as an operator of the Site, and any other conclusion is arbitrary, capricious, and contrary to applicable law and sound public policy. Accordingly, the statement in Paragraph 7 of the Agreement that the Landfill was "operated by the City of Albion" is clearly erroneous and must be withdrawn from the Agreement.

CERCLA Section 122(i)(3), 42 U.S.C. § 9622(i)(3), requires the EPA to consider any comments received and permits the Agency to modify or withdraw its consent to the Agreement "if such comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper or inadequate." Based upon the above comments, the City maintains that the proposed Agreement is arbitrary and capricious and contrary to the applicable law and sound public policy. Furthermore, the City neither agrees with nor concedes the validity of any of EPA's purported Statement of Facts or Legal Determinations contained in the Agreement.

Please do not hesitate to contact us if you have any questions.

Very truly yours,

VARNUM, RIDDERING, SCHMIDT & HOWLETT^{LLP}



Mark M. Davis

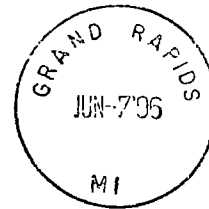
MMD/tas

cc: Kurt Lindland, EPA
Leah Evison, EPA
Connie Puchalski, EPA

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